



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 681

IN THE MATTER
OF
ROBERT KOMINSKY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Robert Kominsky pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 18, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kominsky. The Commission has concluded its inquiry and, on April 16, 2003, found reasonable cause to believe that Kominsky violated G.L. c. 268A, § 23(b)(2) and (b)(3).

The Commission and Kominsky now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Kominsky is the West Bridgewater Police Chief. As the police chief, Kominsky is a municipal employee as that term is defined in G.L. c. 268A, § 1. In his official capacity, he participates in all personnel matters concerning subordinate officers including hiring, termination, discipline and overall supervision.

2. On several occasions over a year and a half, Kominsky asked subordinate police employees to make cash deposits in the chief's son's account at a correctional facility in Dedham. The requests took place at the police station during normal working hours. The officers performed these errands on town time, using a police vehicle. Each errand took approximately an hour and involved a distance of 50 miles round trip. The subordinates complied because the requests came from the chief as their supervisor.

-Conclusions of Law-

3. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his position to secure for himself or others unwarranted privileges of substantial value not properly available to similarly situated individuals.

4. By asking his subordinates to perform personal errands for him, Kominsky knowingly or with reason to know used his position as police chief. Where Kominsky was the supervisor and had the ability to and did take action concerning the terms and conditions of the subordinates' employment, his requests for private errands constituted a use of his position.

5. Kominsky's ability to secure personal favors under these circumstances was a special advantage or privilege. There was no public safety justification for such requests. Therefore, asking for such favors under these circumstances was an unwarranted privilege.

6. Having a subordinate do personal errands for a supervisor on municipal time using public resources is of substantial value as each hour long trip would exceed \$50 in taxicab costs as well as the cost that the town incurred for the subordinates' salaries while performing the errands. There is no town ordinance or other policy that would permit a supervisor to ask subordinates to do personal errands on work time and using public resources. The Commission has consistently held that the use of public resources of substantial value (\$50 or more) for a private purpose not authorized by law amounts to the use of one's official position to secure an unwarranted privilege. These resources include a public employee's time on the public payroll and the use of public vehicles.

7. Therefore, by knowingly using his position as police chief to secure for himself these unwarranted privileges of substantial value not properly available to similarly situated individuals, Kominsky violated §23(b)(2).

8. Section 23(b)(3) prohibits a state employee from knowingly, or with reason to know, acting in a manner that would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy their favor in the performance of their official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

9. By asking for private favors from subordinates while supervising those subordinates, Kominsky acted in a manner which would cause a reasonable person knowing these facts to conclude that the subordinates might unduly enjoy his favor in the performance of his official duties as their supervisor. Moreover, he did not make the relevant disclosure that would have dispelled the appearance of conflict from arising or allowed his appointing authority to review the situation. Therefore, in so acting, Kominsky violated G.L. c. 268A, §23(b)(3) on each occasion.

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Kominsky, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kominsky:

- (a) that Kominsky pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2) and (b)(3); and
- (b) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 29, 2003